

**Harbour East Community Council
September 15, 2011**

TO: Chair and Members of Harbour East Community Council

SUBMITTED BY:



Austin French, Manager, Planning Services

DATE: September 1, 2011

SUBJECT: Case 16988: Development Agreement for 216 Main Street, Dartmouth

ORIGIN

An application by Daniel Poirier to enter into a development agreement for a spa and hair salon use on the lands located at 216 Main Street, Dartmouth.

RECOMMENDATION

It is recommended that Harbour East Community Council:

1. Give notice of Motion to consider the proposed development agreement as set out in Attachment A of this report and schedule a public hearing;
2. Approve the proposed development agreement as set out in Attachment A of this report to permit a spa and hair salon use within the existing building on lands as shown on Map 1 of this report on Main Street, Dartmouth; and
3. Require the agreement be signed by the property owner within 120 days, or any extension thereof granted by Council on request of the property owner, from the date of final approval by Council and any other bodies as necessary, including applicable appeal periods, whichever is later; otherwise this approval will be void and obligations arising hereunder shall be at an end.

BACKGROUND

The lands at 216 Main Street, Dartmouth, currently contain a residential dwelling with a home occupation (Inspired You Spa) that utilizes approximately 75% of the floor area. The Dartmouth Land Use By-law (LUB) only permits home occupations up to 25% of the floor area of a building. The land owner wishes to expand the operation to 100% of the building's total floor area and erect an awning mounted sign and a ground sign for the use. To achieve this goal, Daniel Poirier, the land owner, has applied to enter into a development agreement to expand the spa as a neighbourhood convenience use.

Location, Designation, Zoning and Surrounding Land Use

The lands are:

- located on the south side of Main Street;
- approximately 9922 square feet in area;
- designated Residential under Dartmouth Municipal Planning Strategy (MPS) (Map 1);
- zoned R-1 (Single Family Residential) under the Dartmouth Land Use By-law (Map 2); and
- surrounded by land uses zoned R-1 to the east and west along Main Street, and abutting the rear.

Land Use By-law Provisions

Under the General Provisions of the Dartmouth LUB home occupation uses allow residents to utilise their dwelling for limited commercial enterprises (such as day care, home office, hairdressing) subject to certain provisions such as:

- must be operated by resident occupant of the dwelling;
- clearly accessory to the main use of the dwelling;
- conducted within enclosed space of the dwelling or accessory building;
- limited to 25% of total floor area of the dwelling;
- permits no alterations that would change the physical character of the dwelling as a residence;
- limit signage to 1 sign of 2 square feet in area; and
- require one off-street parking space for each 200 square feet of floor space occupied by the home occupation.

Enabling Policy

If a homeowner wishing to have a large home occupation such as a neighbourhood convenience use, the Dartmouth MPS enables such uses through the development agreement process under policy C-2 (Attachment C). This type of commercial use consists of grocery stores, drug stores, barber shops and TV repair shops. This enables Council to consider proposals for neighbourhood convenience uses on a case by case basis and to consider such aspects as the compatibility of the use, bulk and scale of the development, traffic, parking, and landscaping as well as other criteria under Policy IP-1(c).

DISCUSSION

Staff has reviewed the proposal based on all applicable policies of the Dartmouth MPS, which are included in Attachment B to this report. Staff are of the opinion that the proposal is consistent with all applicable policies of the Dartmouth MPS. The following issues have been identified for more detailed discussion.

Land Use Impacts

In an attempt to minimize the impact of the proposed expansion on adjacent residential uses, the draft development agreement, (as described in Attachment A) prohibits:

- any alterations that would change the character of the dwelling;
- operating the spa before 9:00 a.m. and after 7:00 p.m.;
- outdoor storage; and
- refuse containers to be in view from adjacent properties and streets/sidewalks.

Traffic

Access to Inspired You Spa is currently permitted from two access points from Main Street and one from Farquharson Street. Staff are of the opinion that the driveway to Farquharson Street, a local street, should be removed. This action will minimise the impact of the proposed expanded commercial area on the local street. Also, the one way driveway onto Main Street shall have signs erected indicating "Enter Only" and "Exit Only".

Parking

On-site parking requirements in the draft Agreement are consistent with the Dartmouth Land Use By-law general provisions for number and size of spaces, surfacing system, and bicycle parking.

Landscaping/Screening

The draft Agreement contains requirements for screening of parking and common boundary areas in the Landscaping section of the draft Agreement. Parking areas are to be screened by a wood fence at least 5 feet high with coniferous shrubs planted along its base.

Signage

The draft development agreement provides for two signs on the property. One is an awning sign to be affixed over the front door of the dwelling. The proposed sign is about 3 feet in height and eight feet in width having the "Inspired You Spa" logotype as shown on Schedule C of the Agreement. The second sign is a changeable letter ground sign with a planter type base approximately 8 feet in height and 6 feet in width as shown on Schedule C of the Agreement.

Conclusion

Staff are of the opinion that the proposed development agreement as set out in Attachment A is consistent with the intent of the MPS for neighbourhood convenience uses within the Residential designation. Therefore, staff recommends that Harbour East Community Council approve the proposed development agreement, included as Attachment A of this report.

BUDGET IMPLICATIONS

There are no budget implications. The Developer will be responsible for all costs, expenses, liabilities and obligations imposed under or incurred in order to satisfy the terms of this Agreement. The administration of the Agreement can be carried out within the budget with existing resources.

FINANCIAL MANAGEMENT POLICIES / BUSINESS PLAN

This report complies with the Municipality's Multi-Year Financial Strategy, the approved Operating, Project and Reserve budgets, policies and procedures regarding withdrawals from the utilization of Project and Operating reserves, as well as any relevant legislation.

COMMUNITY ENGAGEMENT

The community engagement process is consistent with the intent of the HRM Community Engagement Strategy. The level of community engagement was information sharing, achieved through the HRM Website, responses to inquiries, as well as an information and notification sheet that was sent to property owners in the general area of the site giving notice of the Public Information Meeting.

Should Council decide to proceed with a public hearing on this application, in addition to the published newspaper advertisements, property owners within the notification area will be notified as shown on Map 2.

The proposed development agreement will potentially impact local residents and property owners on Main Street, Farquharson Street and adjacent residential uses.

ALTERNATIVES

1. Council may choose to approve the proposed development agreement as set out in Attachment A of this report. This is the recommended course of action.
2. Council may choose to approve the proposed development agreement subject to modifications. This may necessitate further negotiation with the applicant and may require a second public hearing.
3. Council may choose to refuse the proposed development agreement, as set out in Attachment A of this report and in doing so, must provide reasons based on a conflict with MPS policies.

ATTACHMENTS

Map 1	Generalized Future Land Use
Map 2	Zoning and Location
Attachment A	Proposed Development Agreement
Attachment B	Excerpts from the Dartmouth MPS
Attachment C	Minutes from Public Information Meeting

**Development Agreement 216 Main Street
Community Council Report**

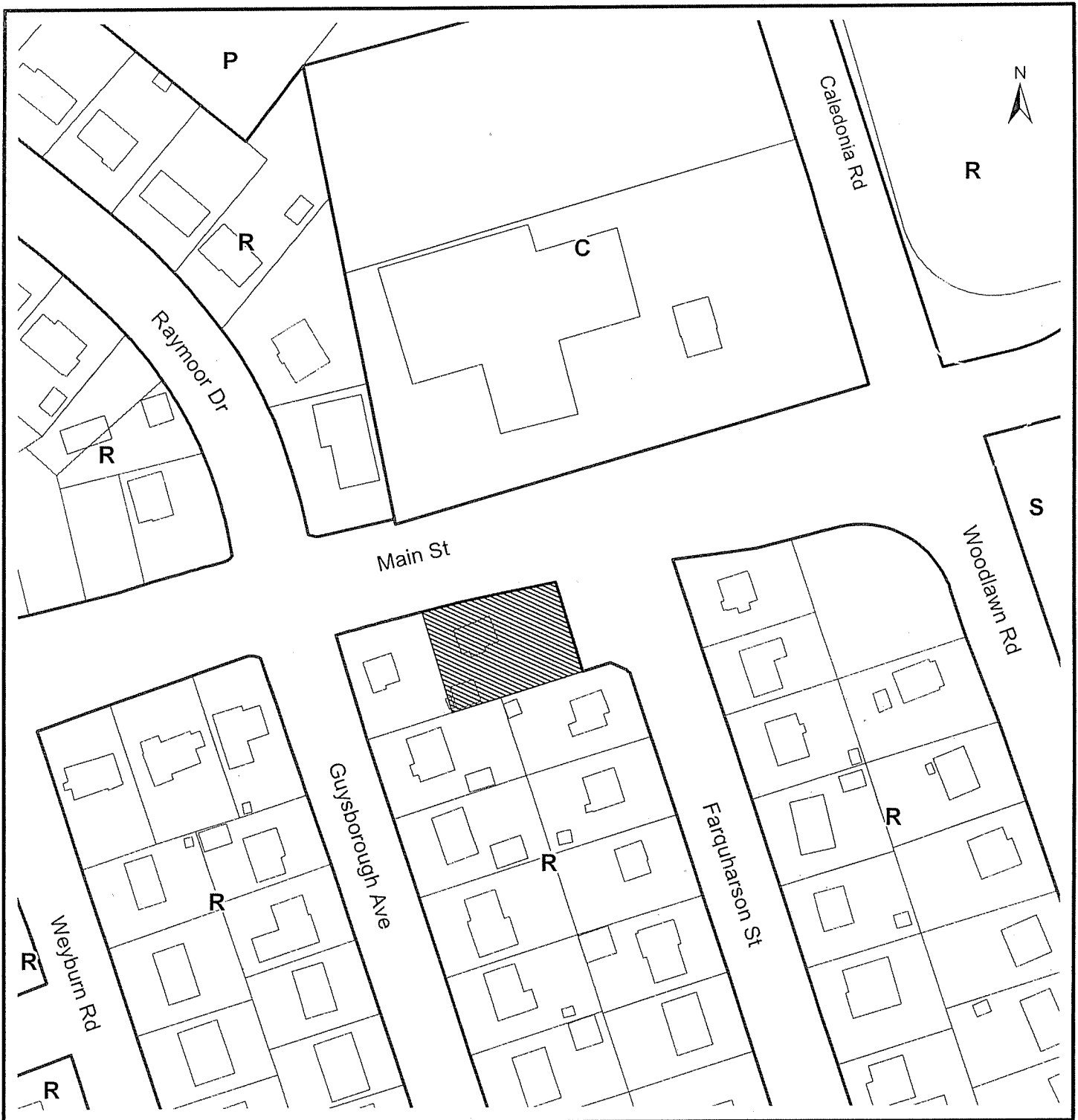
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September 15, 2011

A copy of this report can be obtained online at <http://www.halifax.ca/commcoun/cc.html> then choose the appropriate Community Council and meeting date, or by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.


Report Prepared by: Darrell Joudrey, Planner 1, 490-4181

Report Approved by: Austin French, Manager, Planning Services, 490-6717



Map 1 - Generalized Future Land Use

216 Main Street

 Subject Property

Designation

R	Residential
C	Commercial
P	Park
S	Institutional

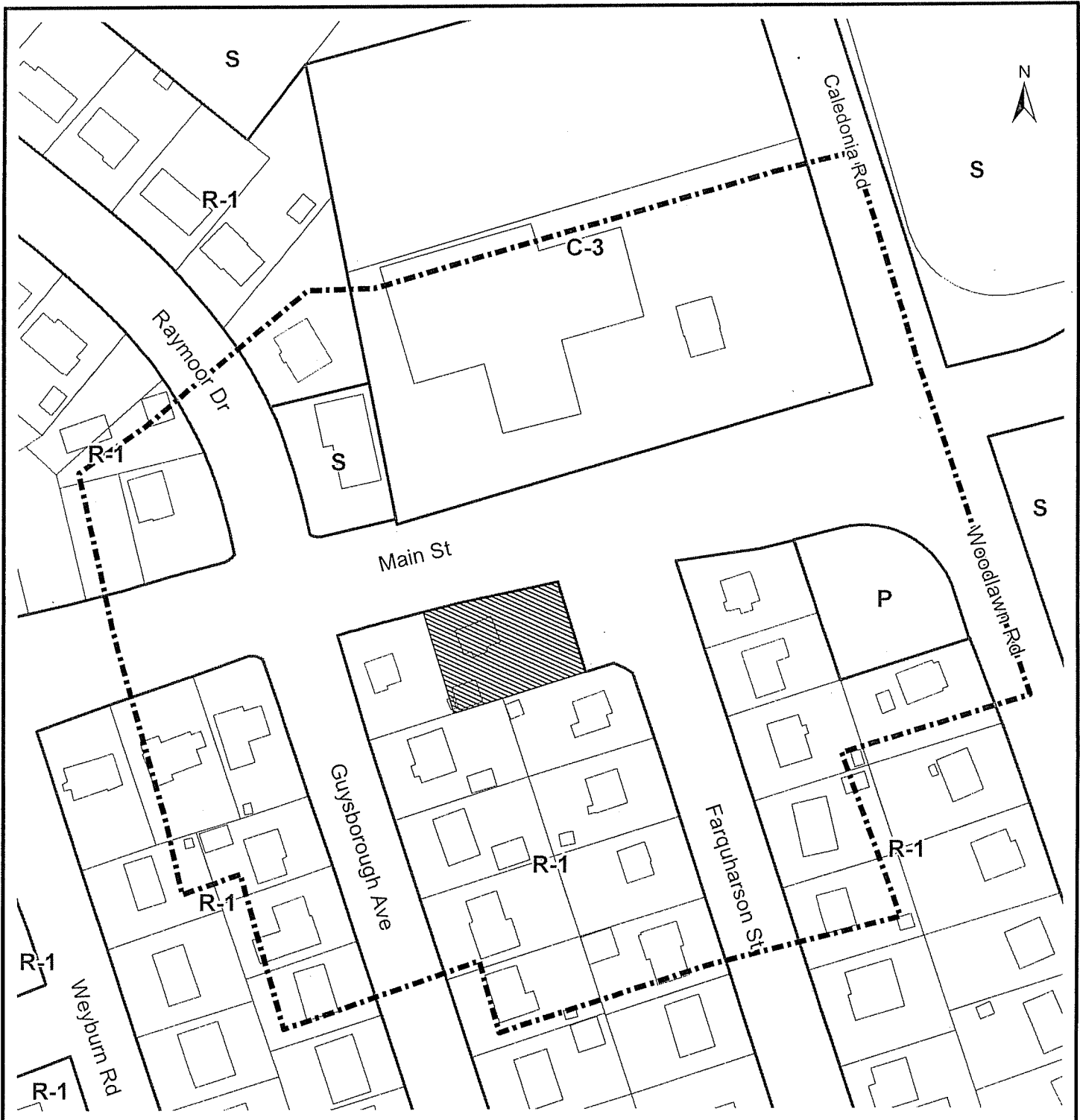
HALIFAX
REGIONAL MUNICIPALITY
COMMUNITY DEVELOPMENT
PLANNING SERVICES

0 30 60 120 180
Feet

This map is an unofficial reproduction
of a portion of the Generalized Land Use
Map for the Dartmouth Plan Area


HRM does not guarantee the accuracy
of any representation on this plan

Dartmouth Plan Area



Map 2 - Zoning and location

216 Main Street

 Subject Property

 Notification Area

Zone

R-1 Single Family Residential
C-3 General Business
P Park
S Institutional

0 30 60 120 180 Feet

This map is an unofficial reproduction of a portion of the Zoning Map for the Dartmouth Plan Area

HRM does not guarantee the accuracy of any representation on this plan

Dartmouth Plan Area

ATTACHMENT A: PROPOSED DEVELOPMENT AGREEMENT

THIS AGREEMENT made this day of **[Insert Month]**, 2011,

BETWEEN:

[Insert Name of Corporation/Business]

a body corporate, in the Province of Nova Scotia
(hereinafter called the "Developer")

OF THE FIRST PART

- and -

HALIFAX REGIONAL MUNICIPALITY

a municipal body corporate, in the Province of Nova Scotia
(hereinafter called the "Municipality")

OF THE SECOND PART

WHEREAS the Developer is the registered owner of certain lands located at 216 Main Street and which said lands are more particularly described in Schedule A hereto (hereinafter called the "Lands");

AND WHEREAS the Developer has requested that the Municipality enter into a Development Agreement to allow for a spa and hair salon use on the Lands pursuant to the provisions of the *Halifax Regional Municipality Charter* and pursuant to Policies C-2 and IP-1(c) of the Dartmouth Municipal Planning Strategy;

AND WHEREAS the Harbour East Community Council for the Municipality approved this request at a meeting held on **[Insert - Date]**, referenced as Municipal Case Number 16988;

THEREFORE, in consideration of the benefits accrued to each party from the covenants herein contained, the Parties agree as follows:

PART 1: GENERAL REQUIREMENTS AND ADMINISTRATION

1.1 Applicability of Agreement

The Developer agrees that the Lands shall be developed and used only in accordance with and subject to the terms and conditions of this Agreement.

1.2 Applicability of Land Use By-law and Subdivision By-law

Except as otherwise provided for herein, the development, use and subdivision of the Lands shall comply with the requirements of the Land Use By-law for Dartmouth and the Regional Subdivision By-law, as may be amended from time to time.

1.3 Applicability of Other By-laws, Statutes and Regulations

1.3.1 Further to Section 1.2, nothing in this Agreement shall exempt or be taken to exempt the Developer, lot owner or any other person from complying with the requirements of any by-law of the Municipality applicable to the Lands (other than the Land Use By-law to the extent varied by this Agreement), or any statute or regulation of the Provincial/Federal Government and the Developer or Lot Owner agree(s) to observe and comply with all such laws, by-laws and regulations, as may be amended from time to time, in connection with the development and use of the Lands.

1.3.2 The Developer shall be responsible for securing all applicable approvals associated with the on-site and off-site servicing systems required to accommodate the development, including but not limited to sanitary sewer system, water supply system, stormwater sewer and drainage system, and utilities. Such approvals shall be obtained in accordance with all applicable by-laws, standards, policies, and regulations of the Municipality and other approval agencies. All costs associated with the supply and installation of all servicing systems and utilities shall be the responsibility of the Developer. All design drawings and information shall be certified by a Professional Engineer or appropriate professional as required by this Agreement or other approval agencies.

1.4 Conflict

1.4.1 Where the provisions of this Agreement conflict with those of any by-law of the Municipality applicable to the Lands (other than the Land Use By-law to the extent varied by this Agreement) or any provincial or federal statute or regulation, the higher or more stringent requirements shall prevail.

- 1.4.2 Where the written text of this Agreement conflicts with information provided in the Schedules attached to this Agreement, the written text of this Agreement shall prevail.

1.5 Costs, Expenses, Liabilities and Obligations

The Developer shall be responsible for all costs, expenses, liabilities and obligations imposed under or incurred in order to satisfy the terms of this Agreement and all Federal, Provincial and Municipal laws, by-laws, regulations and codes applicable to the Lands.

1.6 Provisions Severable

The provisions of this Agreement are severable from one another and the invalidity or unenforceability of one provision shall not affect the validity or enforceability of any other provision.

PART 2: DEFINITIONS

2.1 Words Not Defined under this Agreement

All words unless otherwise specifically defined herein shall be as defined in the applicable Land Use By-law and Subdivision By-law, if not defined in these documents their customary meaning shall apply.

PART 3: USE OF LANDS, SUBDIVISION AND DEVELOPMENT PROVISIONS

3.1 Schedules

The Developer shall develop the Lands in a manner, which, in the opinion of the Development Officer, conforms with the following Schedules attached to this Agreement and filed in the Halifax Regional Municipality as Case Number 16988:

Schedule A	Legal Description of the Lands
Schedule B	Site Plan
Schedule C	Signage

3.2 Requirements Prior to Approval

- 3.2.1 Notwithstanding any other provision of this Agreement, the Developer shall not occupy or use the Lands for any of the uses permitted by this Agreement unless all approvals have been issued by the Municipality. No Occupancy Permit shall be issued by the Municipality unless and until the Developer has complied with all applicable provisions of this Agreement and the Land Use By-law (except to the extent that the provisions of the Land Use By-law are varied by this Agreement) and with the terms and conditions of

all permits, licenses, and approvals required to be obtained by the Developer pursuant to this Agreement.

3.3 General Description of Land Use

3.3.1 The use(s) of the Lands permitted by this Agreement are as follows:

- (a) Spa and hair salon; and
- (b) The spa and hair salon use shall be permitted to sell stock-in-trade on the Lands only in relation to the spa and hair salon use.

3.3.2 The Development Officer may approve unenclosed structures attached to a main building such as verandahs, decks and porches and steps, barrier free ramps, to be located within the minimum front, side and rear yards provided the provisions of the Dartmouth Land Use By-law as amended from time to time for such structures are adhered to.

3.4 Siting and Architectural Requirements

3.4.1 The Developer agrees that no alteration shall be made to the exterior of the building that would change the residential character of the existing dwelling on the lands as illustrated in Schedule C of this Agreement.

3.4.2 Notwithstanding Section 3.4.1, the Municipality agrees that minor alterations may be made to the exterior of the building provided the changes are, in the opinion of the Development Officer, consistent with the intent of this Agreement.

3.5 PARKING, CIRCULATION AND ACCESS

3.5.1 The internal driveway layout and the number and layout of parking spaces shall be as shown on Schedule B.

3.5.2 The parking areas shall provide a minimum of 8 parking spaces and shall be hard surfaced and defined by pre-cast concrete curbs.

3.5.3 All bicycle parking shall be located in the garage.

3.5.4 Signage shall be located indicating one way direction of driveway at 216 Main Street as shown on Schedule B with an "Enter Only" sign at the western driveway access and an "Exit Only" sign at the eastern driveway access.

3.6 OUTDOOR LIGHTING

The Developer agrees that all exterior lighting shall be directed to driveways, parking areas, loading area, building entrances and walkways and shall be arranged so as to divert the light away from streets, adjacent lots and buildings.

3.7 LANDSCAPING

- 3.7.1 All portions of the Lands not used for the dwelling, parking areas, driveways, curbing, or walkways shall be landscaped. Landscaping shall be deemed to include grass, mulch, decorative stone or water features, planting beds, trees, bushes, shrubs and other plant material or decorative element deemed acceptable by the Development Officer.
- 3.7.2 All plant material and sodded areas as referenced in section 3.7.1 shall be restored where areas are planted in conjunction with disturbance caused by the required fencing, driveway closure and parking expansion.
- 3.7.3 The Developer shall provide a solid board fence a minimum of 5 feet in height but no greater than 6 feet in height to screen parking areas along common property boundaries as illustrated on Schedule B.
- 3.7.4 The area at the base of the fence shall be planted with coniferous shrubs at a maximum spacing of 10 feet on centre.

3.8 MAINTENANCE

The Developer shall maintain and keep in good repair all portions of the development on the Lands, including but not limited to, the exterior of the building, fencing, walkways, parking areas and driveways, and the maintenance of all landscaping including the replacement of damaged or dead plant stock, trimming and litter control, garbage removal and snow and ice control, salting of walkways and driveways.

3.9 SIGNS

- 3.9.1 The sign requirements shall be accordance with the Dartmouth Land Use By-law as amended from time to time.
- 3.9.2 An awning depicting the name of the business as illustrated on Schedule C shall be permitted over the front entrance.
- 3.9.3 The Developer shall be permitted an illuminated changeable letter planter type ground sign with a total sign face area not to exceed the dimensions of eight (8) feet in height and six (6) feet in width as shown on Schedule C that does not impede pedestrian or vehicular movement on the lands in the opinion of the Development Officer.
- 3.9.4 The planter type ground sign shall not obstruct the vision of drivers (intersection sight triangles) leaving/entering the roadway or driveways, or detract from the visibility or effectiveness of any traffic sign or control device on public streets.
- 3.9.5 Ornamental plants shall be planted and maintained inside the base of the sign as part of the required landscaping.

3.10 HOURS OF OPERATION

- 3.10.1 The spa use shall be permitted to operate between the hours of 9:00 a.m. and 7:00 p.m. seven days a week.

PART 4: OFF-SITE DISTURBANCE

- 4.1 The Developer agrees to engage a qualified contractor to remove the existing dropped curb where the on-site driveway accesses Farquarson Street and replace it with a highback curb. The Developer is responsible to secure all permits from the Municipality for said replacement. These works must meet the requirements of the Streets and Services By-law, the HRM Municipal Design Guidelines and are the sole responsibility of the Developer. In the event the curb reinstatement cannot be completed due to winter conditions the Municipality shall not issue any Occupancy Permits until security has been provided to the Municipality in the amount of 110 percent of the estimated cost of completion of all outstanding work. The security shall be in favour of the Municipality and may be in the form of a certified cheque or irrevocable, automatically renewable letter of credit in the Municipality's name issued by a chartered bank. The security shall be returned to the Developer only upon completion of all work, as described herein and illustrated on the Schedules, and as approved by the Municipality. Should the Developer not complete the work within 1 year the Municipality may use the deposit to complete the work as set out in the above subsections. The Developer shall be responsible for all cost in this regard exceeding the deposit. The security deposit or unused portion of the security deposit shall be returned to the Developer upon completion of the work and its certification.
- 4.2 Any disturbance to existing off-site infrastructure resulting from the development, including but not limited to, streets, sidewalks, curbs and gutters, street trees, landscaped areas and utilities, shall be the responsibility of the Developer, and shall be reinstated, removed, replaced or relocated by the Developer as directed by the Development Officer, in consultation with the Development Engineer.

PART 5: AMENDMENTS

5.1 Non-Substantive Amendments

The following items are considered by both parties to be not substantive and may be amended by resolution of Council.

- (a) The granting of an extension to the date of commencement of development as identified in Section 6.3 of this Agreement;

- (b) The granting of an extension to the length of time for the completion of the development as identified in Section 6.5 of this Agreement; and
- (c) Changes to hours of operation.

5.2 Substantive Amendments

Amendments to any matters not identified under Section 5.1 shall be deemed substantive and may only be amended in accordance with the approval requirements of the *Halifax Regional Municipality Charter*.

PART 6: REGISTRATION, EFFECT OF CONVEYANCES AND DISCHARGE

6.1 Registration

A copy of this Agreement and every amendment or discharge of this Agreement shall be recorded at the Registry of Deeds or Land Registry Office at Halifax, Nova Scotia and the Developer shall incur all costs in recording such documents.

6.2 Subsequent Owners

- 6.2.1 This Agreement shall be binding upon the parties hereto, their heirs, successors, assigns, mortgagees, lessees and all subsequent owners, and shall run with the Lands which are the subject of this Agreement until this Agreement is discharged by Council.
- 6.2.2 Upon the transfer of title to any lot(s), the subsequent owner(s) thereof shall observe and perform the terms and conditions of this Agreement to the extent applicable to the lot(s).

6.3 Commencement of Development

- 6.3.1 In the event that development on the Lands has not commenced within 60 days from the date of registration of this Agreement at the Registry of Deeds or Land Registry Office, as indicated herein, the Agreement shall have no further force or effect and henceforth the development of the Lands shall conform with the provisions of the Land Use By-law.
- 6.3.2 For the purpose of this section, commencement of development shall mean application for Development Permit and Occupancy Permit.
- 6.3.3 For the purpose of this section, Council may consider granting an extension of the commencement of development time period through a resolution under Section 6.1 if the Municipality receives a written request from the Developer at least thirty (30) calendar days prior to the expiry of the commencement of development time period.

6.4 Completion of Development

- 6.4.1 Upon the completion of the whole development Council may review this Agreement, in whole or in part, and may:
- (a) retain the Agreement in its present form;
 - (b) negotiate a new Agreement;
 - (c) discharge this Agreement; or
 - (d) for those portions of the development which are completed, discharge this Agreement and apply appropriate zoning pursuant to the Municipal Planning Strategy and Land Use By-law for Dartmouth as may be amended from time to time.
- 6.4.2 For the purpose of this section, completion of development shall mean issuance of an Occupancy Permit.

6.5 Discharge of Agreement

- 6.5.1 If the Developer fails to complete the development after 2 years from the date of registration of this Agreement at the Registry of Deeds or Land Registration Office Council may review this Agreement, in whole or in part, and may:
- (a) retain the Agreement in its present form;
 - (b) negotiate a new Agreement; or
 - (c) discharge this Agreement.

PART 7: ENFORCEMENT AND RIGHTS AND REMEDIES ON DEFAULT

7.1 Enforcement

The Developer agrees that any officer appointed by the Municipality to enforce this Agreement shall be granted access onto the Lands during all reasonable hours without obtaining consent of the Developer. The Developer further agrees that, upon receiving written notification from an officer of the Municipality to inspect the interior of any building located on the Lands, the Developer agrees to allow for such an inspection during any reasonable hour within twenty four hours of receiving such a request.

7.2 Failure to Comply

If the Developer fails to observe or perform any condition of this Agreement after the Municipality has given the Developer thirty (30) calendar days written notice of the failure or default, then in each such case:

- (a) The Municipality shall be entitled to apply to any court of competent jurisdiction for injunctive relief including an order prohibiting the Developer from continuing such default and the Developer hereby submits to the jurisdiction of such Court and waives any defence based upon the allegation that damages would be an adequate remedy;

- (b) The Municipality may enter onto the Lands and perform any of the covenants contained in this Agreement or take such remedial action as is considered necessary to correct a breach of the Agreement, whereupon all reasonable expenses whether arising out of the entry onto the Lands or from the performance of the covenants or remedial action, shall be a first lien on the Lands and be shown on any tax certificate issued under the *Assessment Act*;
- (c) The Municipality may by resolution discharge this Agreement whereupon this Agreement shall have no further force or effect and henceforth the development of the Lands shall conform with the provisions of the Land Use By-law; or
- (d) In addition to the above remedies, the Municipality reserves the right to pursue any other remedy under the *Halifax Regional Municipality Charter* or Common Law in order to ensure compliance with this Agreement.

WITNESS that this Agreement, made in triplicate, was properly executed by the respective Parties on this _____ day of _____, 20__.

SIGNED, SEALED AND DELIVERED
in the presence of:

(Insert Registered Owner Name)

Per: _____

Per: _____

=====

SEALED, DELIVERED AND
ATTESTED to by the proper signing
officers of Halifax Regional Municipality,
duly authorized in that behalf, in the
presence of:

HALIFAX REGIONAL
MUNICIPALITY

Per: _____
Mayor

Per: _____
Municipal Clerk

PROVINCE OF NOVA SCOTIA
COUNTY OF HALIFAX

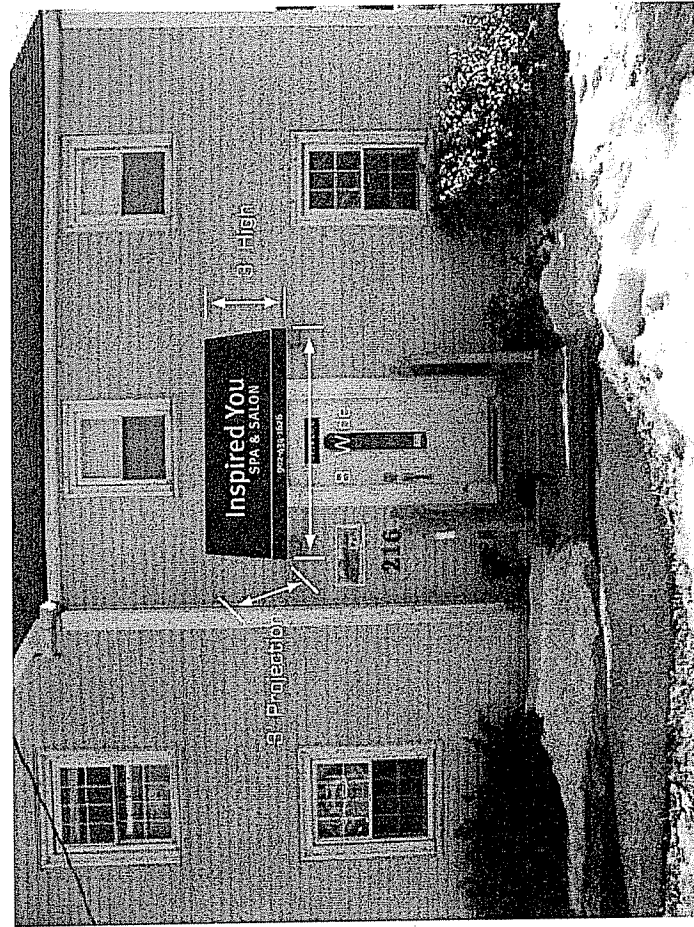
On this _____ day of _____, A.D. 20____, before me, the subscriber personally came and appeared _____ a subscribing witness to the foregoing indenture who having been by me duly sworn, made oath and said that _____, _____ of the parties thereto, signed, sealed and delivered the same in h presence.

A Commissioner of the Supreme Court
of Nova Scotia

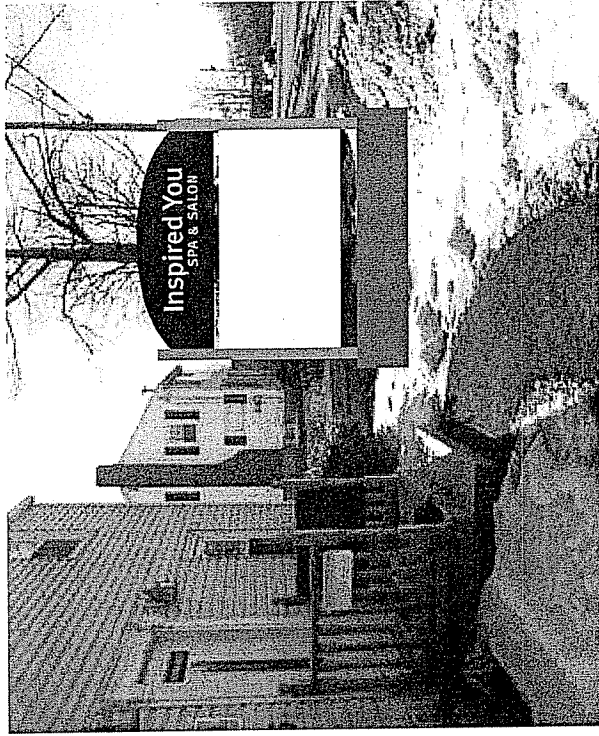
PROVINCE OF NOVA SCOTIA
COUNTY OF HALIFAX

On this _____ day of _____, A.D. 20____, before me, the subscriber personally came and appeared _____ the subscribing witness to the foregoing indenture who being by me sworn, made oath, and said that _____, Mayor and _____, Clerk of the Halifax Regional Municipality, signed the same and affixed the seal of the said Municipality thereto in h presence.

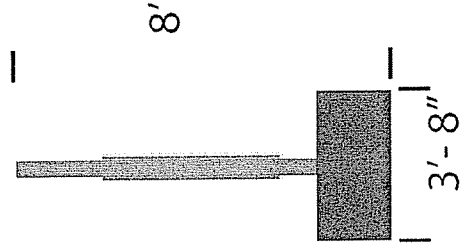
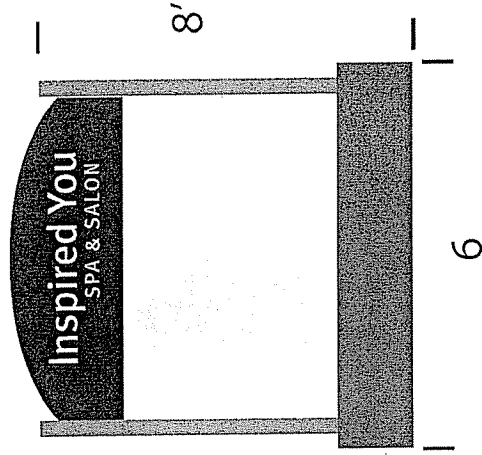
A Commissioner of the Supreme Court
of Nova Scotia



Awning Sign



Planter
Box Sign



Schedule C Signage

HRM does not guarantee the accuracy of any base information.

HALIFAX
REGIONAL MUNICIPALITY
COMMUNITY DEVELOPMENT
PLANNING SERVICES

Attachment B: Excerpts from the Dartmouth Municipal Planning Strategy

- (c) **Neighbourhood Convenience Store:** This form of commercial establishment consists of outlets such as, but not necessarily limited to, grocery stores, drug stores, barber shops, TV repair shops, etc. These uses form a very significant part of any neighbourhood way of life. To date there are approximately 50 of these sorts of facilities within Dartmouth totalling approximately 25,000 square feet in floor area. There is no set criteria for the number or amount of these stores, however, their numbers are usually kept down due to the limited area they serve. There are several concerns related to these uses (location, siting) that criteria should be established for reviewing any proposal of such a use.

To enable neighbourhood convenience outlets to operate in residential areas, they should be reviewed individually on their own merits and handled through the contract zoning provisions of Section 33 (2) (b), 34 (1) of the Planning Act¹.

33(2)(b) Where the municipal development plan so provides, provide that the council may by resolution approve any specific development requested which would not otherwise be permitted by the by-law, but no approval shall be given inconsistent with the municipal development plan.

34(1) Approval by the council pursuant to clause (b) or (c) of subsection (2) of Section 33 shall only be granted subject to the condition that the registered owner of the land upon which the development is to occur shall enter into an agreement with the council containing such terms and conditions as the council may direct.

This process will allow for the use to occur when and where Council sees fit after the appropriate public hearings have occurred without providing a wide open zone within which a wide range of commercial uses may occur (Policy C-2).

Policy C-2 It shall be the intention of City Council to deal with neighbourhood convenience outlets through the contract zoning provisions of the Planning Act - Section 33 (2) (b).

Implementation Policy IP-1(c)

In considering zoning amendments and contract zoning, Council shall have regard to the following:

- (1) that the proposal is in conformance with the policies and intent of the Municipal Development Plan
- (2) that the proposal is compatible and consistent with adjacent uses and the existing development form in the area in terms of the use, bulk, and scale of the proposal

¹

- (3) provisions for buffering, landscaping, screening, and access control to reduce potential incompatibilities with adjacent land uses and traffic arteries
- (4) that the proposal is not premature or inappropriate by reason of:
 - (i) the financial capability of the City is to absorb any costs relating to the development
 - (ii) the adequacy of sewer and water services and public utilities
 - (iii) the adequacy and proximity of schools, recreation and other public facilities
 - (iv) the adequacy of transportation networks in adjacent to or leading to the development
 - (v) existing or potential dangers for the contamination of water bodies or courses or the creation of erosion or sedimentation of such areas
 - (vi) preventing public access to the shorelines or the waterfront
 - (vii) the presence of natural, historical features, buildings or sites
 - (viii) create a scattered development pattern requiring extensions to truck facilities and public services while other such facilities remain under utilized
 - (ix) the detrimental economic or social effect that it may have on other areas of the City.
- (5) that the proposal is not an obnoxious use
- (6) that controls by way of agreements or other legal devices are placed on proposed developments to ensure compliance with approved plans and coordination between adjacent or near by land uses and public facilities. Such controls may relate to, but are not limited to, the following:
 - (i) type of use, density, and phasing
 - (ii) emissions including air, water, noise
 - (iii) traffic generation, access to and egress from the site, and parking
 - (iv) open storage and landscaping
 - (v) provisions for pedestrian movement and safety
 - (vi) management of open space, parks, walkways
 - (vii) drainage both natural and sub-surface and soil-stability
 - (viii) performance bonds.
- (7) suitability of the proposed site in terms of steepness of slope, soil conditions, rock outcroppings, location of watercourses, marshes, swamps, bogs, areas subject to flooding, proximity to major highways, ramps, railroads, or other nuisance factors
- (8) that in addition to the public hearing requirements as set out in the Planning Act and City by-laws, all applications for amendments may be aired to the public via the "voluntary" public hearing process established by City Council for the purposes of information exchange between the applicant and residents. This voluntary meeting allows the residents to clearly understand the proposal previous to the formal public hearing before City Council
- (9) that in addition to the foregoing, all zoning amendments are prepared in sufficient detail to provide:
 - (i) Council with a clear indication of the nature of proposed development, and
 - (ii) permit staff to assess and determine the impact such development would have on the land and the surrounding community

(10) *Within any designation, where a holding zone has been established pursuant to "Infrastructure Charges - Policy IC-6", Subdivision Approval shall be subject to the provisions of the Subdivision By-law respecting the maximum number of lots created per year, except in accordance with the development agreement provisions of the MGA and the "Infrastructure Charges" Policies of this MPS. (RC-Jul 2/02;E-Aug 17/02)*

Attachment C: Public Information Minutes

**HALIFAX REGIONAL MUNICIPALITY
PUBLIC INFORMATION MEETING
CASE NO. 16988 – 216 MAIN STREET, DARTMOUTH**

**7:00 p.m.
Monday, July 11, 2011
East Dartmouth Community Centre
Multi Purpose Centre
50 Caledonia Road, Dartmouth**

**STAFF IN
ATTENDANCE:** Darrell Joudrey, Planner, Planning Applications
Hilary Campbell, Planning Technician
Jennifer Little, Planning Controller

**ALSO IN
ATTENDANCE:** Councillor Darren Fisher, District 6
Daniel P. Poirier, Applicant

**PUBLIC IN
ATTENDANCE:** 15

The meeting commenced at approximately 7:00 p.m.

Opening remarks/Introductions/Purpose of meeting

Mr. Darrell Joudrey, Planner, Planning Applications, called the meeting to order at approximately 7:00 p.m. in the East Dartmouth Community Centre, Multi Purpose Centre at 50 Caledonia Road, Dartmouth.

He introduced himself as the planner guiding this application through the process and also introduced Councillor Darren Fisher, Hilary Campbell, Planning Technician, HRM Planning Services and Jennifer Little, Planning Controller, HRM Planning Services.

Mr. Joudrey advised that the application is to enter into a development agreement to enable a neighbourhood convenience use at 216 Main Street, Dartmouth

Mr. Joudrey reviewed the application process, noting that the public information meeting is an initial step, whereby HRM reviews and identifies the scope of the application and seeks input from the neighborhood. The application will then be brought forward to Harbour East Community Council which will hold a public hearing at a later date, prior to making a decision on the proposed development.

Presentation on Application

Reviewing a slide of the subject property, Mr. Joudrey explained that Daniel Poirier has submitted an application to enable a neighbourhood convenience use; the existing home occupancy use exceeds 25% and would like to enter into a development agreement to allow for this. Mr. Poirier wishes to expand the home based business to 100% of the total floor area. There will be no change to the footprint of the building nor there be any exterior alterations except for the addition of a barrier free entrance, which is not exclusive to the business and additional signage. Mr. Joudrey explained that under the R1 zone, commercial uses are only permitted as a home based business. He reviewed the provisions under the zone and added that the purpose of these restrictions is to ensure that the residential nature is retained and not overshadowed by the business. Mr. Joudrey explained that under the Municipal Planning Strategy, neighborhood convenience uses within a residential are to be reviewed individually through the development agreement process. The development agreement process is to ensure that such uses will fit within the community.

Daniel Poirier, Applicant thanked the residents for coming to the meeting and gave a brief explanation of the business they would like to have in place, explaining that it will be mostly message therapy, esthetic's and hair styling. He explained that he does not want to inconvenience the community and explained that there has been a traffic study completed which didn't show any additional traffic in the area. He added that it is a very quiet zone, however they plan on putting up a fence around the property as an added buffer zone.

Questions and Answers

Ms. Ann Currie, Musquodoboit Harbour, explained that she owns a property on Main Street and explained that it is not a family area because of the traffic in the area. She asked what the difference is between R1 zone and C2 zone.

Mr. Joudrey explained that the R1 zone is strictly residential permitting a single unit dwelling only and commercial uses are only permitted as a home occupancy.

Ms. Currie explained that she thought that it may already be zoned R2 because there used to be businesses previously there in the past. She explained that she has no objections to this application as long as they remain good corporate neighbors.

Mr. Joudrey explained that the C2 zone ends just prior to this property.

Ms. Currie explained that they were told that because of the type of business and the location, they were allowed to have 100% business. There are two driveways; therefore there shouldn't be any issues with traffic backup.

Mr. Maurice Eddy, Dartmouth, addressed concern with parking and explained that there doesn't seem to be much parking available on Farquarson Street. He also addressed concern that if the property is rezoned and the owners sell the property, it can be changed to a different commercial business such as a store for example.

Mr. Joudrey explained that a development is a contract negotiated between the property owner and HRM which goes with the deed. Therefore, if the property is sold, the new owners will have the development agreement attached to the property, and will have to remain on the land unless going through this application process. If the development agreement is discharged, the property would automatically return to its original R1 zoning.

Mr. Kenneth Gresiuk, Dartmouth, explained that he moved into this area because it was a dead-end street and expressed concern with people cutting through their driveway. He asked if somebody has to live in the building in order to run the business.

Mr. Joudrey explained that for a neighborhood convenience use, nobody has to live in the building.

Mr. Gresiuk asked how 25% can be dedicated to commercial if nobody is living there.

Mr. Poirier explained that it might already be 75%.

Mr. Joudrey explained that this is why Mr. Poirier is applying for the development agreement because he has already exceeded the 25% that is permitted.

Mr. Gresiuk explained that his main concern is the through traffic increasing and speeding. He addressed concern with people in the parking lot at 10:30pm that are not staff.

Ms. Lana Gresiuk, Dartmouth, expressed concern with traffic and lack of parking available.

Ms. Darlene Peach, Shareholder at the Spa, explained that the Spa hours are 9am to 5pm and there shouldn't be any traffic or parking used after those hours because of the Spa.

Mr. Joudrey explained that Mr. Poirier is proposing to close off the drive way to Parkinson Street.

Mr. Gresiuk explained that he has no problems with changes to Main Street, his concern lies with the side street, explaining that it is a residential street.

Ms. Currie explained that they put the chain across to avoid people using their driveway as access to Main Street. She explained that there are at least eight parking spaces there and noted that if they block off the second driveway, they could gain an additional two.

At this time there was more discussion regarding people drive across the properties.

Mr. Don MacMillan, Dartmouth, explained that he has no objections with the current spa however, does not want to see a convenience store put there. He asked if this change would affect their current taxes.

Mr. Joudrey explained that reassessment is by the Province. Also, the use is neighbourhood convenience and not a convenience store.

Mr. MacMillian expressed concern with vehicles parked on both side of the street and suggested that there should be a petition in place to only allow vehicles to park on one side of the road.

Some discussion was had regarding the parking on Ferguson Street and how the 'No Parking' signs are not enforced. It was recommended that HRM review this issue.

Mr. Eddy expressed concern with no having enough parking.

Mr. Joudrey explained that eight parking spots for this particular use is adequate.

Ms. Gresiuk explained that they are not against the proposal just has concern with the driveway.

Mr. Joudrey explained that this concern can be added within the development agreement.

Closing Comments

Mr. Joudrey thanked everyone for attending. He encouraged anyone with further questions or comments to contact him.

Adjournment

The meeting adjourned at approximately 7:46 p.m.